

# Order

Michigan Supreme Court  
Lansing, Michigan

December 2, 2011

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2010-22

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

Proposed Amendment of Rule 7.3  
of the Michigan Rules of Professional  
Conduct (Regarding Solicitation of Potential  
Family Law Clients by Attorneys)

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.3 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm](http://www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language is amended with new language indicated  
in underlining and deleted language overstricken.]

## Rule 7.3 Direct Contact with Prospective Clients

- (a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and nondeceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v Kentucky Bar Ass'n*, 486 US 466, 468; 108 S Ct 1916; 100 L Ed 2d 475 (1988). However, in any matter that involves a family law case in a Michigan trial court, a

lawyer shall not initiate contact or solicit a party to establish a client-lawyer relationship until the initiating documents have been served upon that party or 14 days have passed since the date the document was filed, whichever action occurs first. This limitation does not apply if the party and lawyer have a pre-existing family or client-lawyer relationship. For purposes of this rule, "family law case" includes the following case-type code designations from MCR 8.117: DC, DM, DO, DP, DS, DZ, NA, PJ, PH, PP, or VP.

- (b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:
- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress, or harassment.

Staff Comment: This proposal was submitted by the State Bar of Michigan Representative Assembly. The proposed amendment is designed so that it would limit situations in which an attorney soliciting new clients would inform a defendant or respondent that an action has been filed against him or her before the defendant or respondent is served with the papers. The bar argues that allowing attorneys to notify defendants before service leads to greater risk of domestic violence against the filing party or other illegal actions (such as absconding with children or removing assets from a joint bank or other financial account) that may occur before service can be completed.

The staff comment is not an authoritative construction by the Court.

A copy of the order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2010-22. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).

HATHAWAY, J. When commenting on the proposed amendment to the rule, please address whether the proposed amendment is consistent with *Shapero v Kentucky Bar Ass'n*, 486 US 466; 108 S Ct 1916; 100 L Ed 2d 475 (1988), or raises any other constitutional concerns.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 2, 2011

*Corbin R. Davis*

Clerk